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# THE FIRST VERDICT FOR GENOCIDE IN EUROPE AFTER THE SECOND WORLD WAR

**Summary**

This paper presents the case of prosecution of Nikola Jorgić called Jorga, for genocide in the region of Doboj in Bosnia and Herzegovina. The case was prosecuted, according to the principle of universal jurisdiction, before the court in Germany. Nikola Jorgić was found guilty of genocide and sentenced to life imprisonment, which he serves in a prison in Bochum, Germany. Due to the importance of this process, and the fact that in scientific and professional circles, especially in the public the facts proved in this case do not use enough, we decided to make the translation of the judgment of the Federal Court in Düsseldorf. This work should stimulate interest in this very important case, but also for some other cases for war crimes which were sentenced by the same principle in Germany and some other countries.

## Introduction

German courts in the first trial for genocide since World War II, legally ruled that in the Doboj area genocide was committed. In this procedure Nikola Jorgić was sentenced to life imprisonment, which serves in a prison in Bochum.

Doboj was strategically important during the aggression against Bosnia. Before the war (1991), the population of Doboj consisted of 41,164 Bosniacs, 39,820 Serbs, 13,264 Croats, 5,765 Yugoslavs and 2,536 others. In May 1992, the occupation of Doboj was conductedby the Serbian forces. This occupation of Doboj was marked by mass crimes and ethnic cleansing committed by Serbian forces. The effect of these forces has resulted in the fact that at least 1,000 Bosniac and Croat civilians were killed, and by July of the same year the city has been completely cleared of Bosniacs and Croats.

Bosniac and Croatian civilians were persecuted, tortured, killed, raped, imprisoned in concentration camps and were exposed to other inhuman treatments. The Bosniac and Croatian property was destroyed, mosques in the city were demolished[1].

It should be noted that in this small study we found no systematic data on war casualties and the destruction of Doboj, and it is known that the situation with the other parts and the cities of Bosnia and Herzegovina is similar. This situation needs to be changed, these data are necessary for the creation of the reconciliation process, but also for other important processes in post-conflict societies.

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1 *Legally Validated Doboj Genocide is part of Bosnian Genocide*, http://bosniagenocide.wordpress.com/2011/01/04/legally-validated-doboj-genocide-is-part-of-bosnian-genocide/,

## Nikola Jorgić – the first convict for genocide in Europe after the WW2[2]

Nikola Jorgić called Jorge was born in 1946 in the village Kostajnica, the municipality of Doboj. His parents, who were very wealthy, were engaged in farming on their own country. Nine months after his birth his father died. He grew up with his mother and three siblings in their hometown. His education was completed in 1967 when he finished High School for Mechanics and gained a trade as a fitter and welder. After that, he went on 21-month long military service in the former JNA. A few months after the end of military service in May 1969 he traveled to the Federal Republic of Germany, where he received a residence permit.

Over the next 23 years, until 1992 he lived in various cities in the German state of Rhine-Ruhr. Staying in Germany, he worked various jobs, but at a given time, due to health problems, he was unemployed. Since coming to Germany, and the next 14 years, until 1983, he worked as a mechanic and welder at various companies. In the early nineties of the last century he was employed as an auxiliary worker in a nightclub, but these jobs did not stay long. Other time he spent in Germany as an unemployed.

At the beginning of the war in the former Yugoslavia, he spent more time in his native Kostajnica, where in the mid-eighties he built, for local conditions, very comfortable house with a pool. In the late eighties he began in his hometown with the construction of a night club that was allegedly funded by the sale of land, but it was never finished.

He married three times. First marriage to Marija Mlikota, completed in 1969, and lasted only a year. From this marriage he had a

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2 Bio-note on Nikola Jorgić atetaken from the first-degree sentence of the Higher Court in Dusseldorf number IV-26/96, http://www.haguejusticeportal.net/Docs/NLP/Germany/Jorgic_Urteil_26-9-1997.pdf, June 6th, 2013.

daughter who is now married. From the second marriage, which ended in the early seventies, and also was very short, he has birth to two sons. In addition, he has illegitimate son. All three sons are also now grown men, and Nikola Jorgić has no regular contact with them. Then, in 1984, he married his third wife, Jane Smith. In this marriage in December 1993 the daughter was born, and their last common residence was Bochum (Germany ).

In 1992, Nikola Jorgić returned to his native Kostajnica and stayed there. In this war, in the native Kostajnica, he organized and armed paramilitary group that consisted of thirty well-armed persons, and was called "Jorga's group." This unit and Nikola Jorgić as its leader committed many crimes in the Doboj region, for which they were prosecuted before the German courts.

During this period Nikola Jorgić only a couple of times, and for a short period of time (1-2 weeks) went to visit his family in Germany, in Christmas 1992, in February 1993, in February and December 1994. During his last entry in Germany on December 16th, 1995 he was arrested and has since been detained and is currently in prison serving a sentence of life imprisonment.

## The Federal Prosecutor in the Criminal Case against Nikola Jorgić

Participating in the war in Bosnia and Herzegovina Nikola Jorgić with his group committed many crimes against Bosniacs in Doboj. According to the Verdict of Supreme Provincial Court in Düsseldorf, he was found guilty of genocide at eleven cases in connection with[3] and[4]:

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3 *Urteil Oberlandesgericht Düsseldorf* (Nikola Jorgic) IV-26/96 http://www.haguejusticeportal.net/Docs/NLP/Germany/Jorgic_Urteil_26-9-1997.pdf, June 16th, 2013.

4 *Federal Supreme Court makes the basic decision on genocide.* http://www.preventgenocide.org/punish/GermanFederalCourt.htm

- Murder in three cases, in which a total of 30 persons were killed. Special emphasis is on killing of 22 civilians from the village of Grapska and seven civilians from the village of Ševarlije;

- Serious bodily injuries and unlawful imprisonment, in the remaining eight cases. The convicted founded the camp in elementary school "Kostajnica", where he closed civilians of Grapska after the massacre. He arrested 21 Muslims on their way to Gračanica and deported them to the camp, in the barracks, " July 4th" in Miljkovac, and after three days conducted eight men in the Central Prison, where they were on the roof of the prison garage ordered to beat each other with iron rods and brass knuckles. He also personally put a bucket on a prisoner's head in the Central Prison in Doboj and struck with a rod until that person exhaled , etc.

Because of these crimes, the Supreme Court of the German State of North Rhine - Westfalia in Düsseldorf condemned Jorgić on September 26th, 1997 to a single sentence of life imprisonment, and his guilt is characterized as particularly severe[5].

A judge of the Court Gunter Kranc, who announced the verdict said that "the accused killed and harassed people willingly. This court is convinced beyond a reasonable doubt that the defendant was deeply involved in these terrible events"[6]

This verdict, sentenced Jorgić challenged in the Federal Court in Düsseldorf. He, above all, challenged the jurisdiction of the German courts for offenses he had been charged, and which were committed in Bosnia and Herzegovina, and emphasised the infringement of the provisions of criminal procedure and substantive law violations. His

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5 *Urtail Oberlandesgericht Düsseldorf* (Nikola Jorgic) IV-26/96, op.cit.

6 *203 Izgubljeni ratni zločinci*, CIN, http://www.cin.ba/prica-19-izgubljeni-ratni-zlocinci/, June 16th, 2013.

appeal on April 30th, 1999 was rejected by the judicial institutions (BGH 3 p 215/98 of April 30th, 1999) and confiremed him to life imprisonment. The Federal Court reversed the first instance verdict only in the work in which the convicted person was found guilty of 11 counts of genocide, the in a way that it found that it is one genocide, because the behavior of the prisoner during the war saw as a unique behavior .

The Federal Court has also upheld a part of the first instance verdict by which the guilt of the accused is assessed as being particularly difficult, which prevents the same to be released before the expiration of 15 years. Prior to this decision of the Federal Court the International Criminal Tribunal for the Former Yugoslavia refused to take the case Jorgić.

The Federal Court found that the genocide, under the Convention on Genocide of the November 9th, 1948 (which Germany ratified), a crime that can be prosecuted by all states that have ratified the Convention.

Furthermore, Jorgić filed appeal in the German Constitutional Court, which , however, refused to make a decision on this issue (2 BvR 1290-1299 December 12th, 2000) . As a result, the verdict in the case against Nicholas Jorgić became final[7].

Nikola Jorgić asked for the protection of his rights before the European Court of Human Rights in Strasbourg, heading appeal on May 23rd, 2001, claiming that they violated his rights under Article 5, 6 and 7 of European Convention on Human Rights. Jorgić noted that German courts have no jurisdiction over his prosecution. Moreover, he complained that his conviction for genocide, is contrary to Article 7.1 of the Convention (no punishment without law), especially because a broad interpretation of the crime by the national courts have no foothold in the German public or international law.

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7 *Verfassungsbeschwerde.* http://www.bverfg.de/entscheidungen/rk20001212_2bvr129099.html, June 16th, 2013.

On July 12th, 2007 the European Court of Human Rights has delivered its verdict and unanimously ruled that:

-There was no violation of Article 6.1 (right to a fair trial) of the Convention

-There was no violation of Article 5.1 (right to liberty and security) of the Convention, the jurisdiction of German courts to prosecute genocide, and that

-There was no violation of Article 7 (no punishment without law)[8].

It seems important to emphasize the fact that the European Court of Human Rights, in accordance with Article 36.1 of the Convention, informed Bosnia and Herzegovina of the right to participate in proceedings before the same. However, the Bosnian authorities did not take advantage of this opportunity.

Even more disturbing the fact is that neither the Ministry of Justice or the Court of BH, have information about the war crimes that have been conducted, outside the jurisdiction of the ICTY and the Court, and as Jorgović's son Mario said to the Center for Investigative Journalism nobody showed interest in his case, either BH, Government of RS, or tribunal in The Hague[9].

8 *Judgment ((Application no. 74613/01).* European Court of Human Rights *http://www.trial-ch.org/uploads/tx_wowdb/Case_Jorgic_v._Germany_02.pdf.* June 6th, 2013.

9 *Izgubljeni ratni zločinci.* op.cit.

# JUDGMENT[10]

## BGH 3 p 215/98 of April 30th, 1999

## (The Federal Court of Düsseldorf)

The jurisdiction of the German courts for crimes of genocide committed abroad.

### Principles of Federal Court

1. The provision of Art. 6th No. 1 of the Criminal Code, which is based on the principle of universal jurisdiction, the German criminal law for the crime of genocide committed abroad, in accordance with the provisions of the Genocide Convention of December 9th, 1948, which did not territorially limit the obligation of States - Parties to prevent and punish genocide.

2. Crimes under Art. 211, 212 of the Criminal Code, which were committed in concurrence with the criminal offense of genocide under Art. 220a paragraph 1. No. 1 of the Criminal Code are covered by the principle of universal jurisdiction under Art. 6 No. 1 Criminal Code (hereinafter text states CC).

3. The being of genocide (Art.220a paragraph 1 of the Criminal Code) coverage, both literal and at the end, not just one-off action, but also several natural actions or the actions of the entire series.

4. Genocide (Art.220a paragraph 1. CC) is committed when all actions, defined by law as elements thereof, directed at a specific, spatially defined, national, racial, religious or ethnic group, and when these actions represent a unique spatial and time together.

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10 *Urteil*, http://www.hrr-strafrecht.de/hrr/3/98/3-215-98.php3?referer=db, June 16th, 2013.

## Decision (saying)

1. Acting on audit accused, the conviction of the Supreme Provincial Court in Düsseldorf is reversed from September 26th, 1997, so that the accused is sentenced to life imprisonment for committing genocide in concurrence with the criminal offense of murder in 30 cases.

   His guilt is especially difficult.

2. The rest of the revision is rejected.

3. The applicant shall bear the cost of the audit process.

## Explanation

Provincial Supreme Court in Düsseldorf condemned the accused, a Bosnian Serb, for genocide in the 11 cases, and in concurrence with the criminal offense of inflicting grievous bodily harm and unlawful detention of 20 (found a sentence of nine years), with criminal offense of causing bodily harm and unlawful detention in 8 cases (determined sentence of 9 years), with the crime of unlawful deprivation of liberty in 300 cases (determined life imprisonment), twice in concurrence with the criminal offense of inflicting grievous bodily harm and unlawful deprivation of liberty in 3 cases (determined imprisonment of 7 and 8 years old), in concurrence with the criminal offense of causing grievous bodily harm and unlawful detention in 15 cases (determined sentence of 9 years), unlawful detention in 12 cases (determined imprisonment of 7 years), with the offense of murder in 22 cases (determined life imprisonment), with the crime of causing serious bodily injury (determined imprisonment of 7 years), with the offense of murder in 7 cases (determined life imprisonment) and with the offense of murder in one case (found life imprisonment), to a single sentence of life imprisonment. It found that the fault especially difficult.

Against the judgment the accused filed a revision. He is, above all, challenged the jurisdiction of the German courts for offenses he had been charged, and which were committed in Bosnia and Herzegovina, and the infringement of the provisions of criminal procedure and substantive law violations.

## I. Prerequisites for the procedure

Application of the German criminal law stems from the provisions Article 6 . No. 1 and Art. 7 Para. 2 No. 2 of the Criminal Code.

1. According to the provisions of Article 6 no. 1 CC applies, based on the principle of universal jurisdiction, the German criminal law for crimes of genocide committed abroad. The prerequisite for the establishment of the German jurisdiction to prosecute crimes committed by foreigners abroad against foreigners that the use of German criminal law does not conflict with the prohibition under international law. Furthermore, it is necessary, in addition to the literal fulfillment of the provisions, there is legitimizing connection/interconnecting point in individual cases that requires a direct connection with the prosecution of the state that it has launched , and only then the application of intergovernmental German authorities on criminal offenses committed abroad by alien justified. If you lack such a connection with the state that drives / processed , then the prosecution contrary to the principle of non-interference , which stems from the international legal principle of respect for the sovereignty of other states.

a) There is no prohibition under international law to condemn the accused before the German courts on the basis of the principle of universal jurisdiction.

aa ) The existence of such a prohibition is not particularly evident from Article 6 of the Convention on Genocide of the December 9th, 1948, which would be referred to the exclusive jurisdiction of the courts only country where the genocide or the jurisdiction of an international court of justice. Explanation of why the Convention omitted the principle of universal jurisdiction , which was scheduled earlier draft, may lie in the fact that the parties wanted to prevent any international jurisdiction due to the political character of the protective good that the Convention applies. This, however, has not led to a corresponding ban introduced in the Convention. That the rules of the Convention did not establish the Court's jurisdiction in the state where the offense was committed, stems not only from the background of the creation of the Convention, but also from the fact that the assumption that the crime of genocide can be tried only by a court of the state where they were committed or only international courts would be inconsistent with the obligations undertaken by the Contracting State in Article 1 of the Convention, according to which they are obliged to prevent and punish the crime of genocide. As the most severe cases of genocide committed by the state of the victim or at least committed to its tacit approval, it cannot, as a rule, expected effective prosecution by such a state. Until the establishment of the International Criminal Tribunal for the former Yugoslavia (ICTY), 1993, Tribunal for Rwanda in 1994 and the International Criminal Court (ICC) - based on the Rome Statute of July 15th, 1998, which has not yet entered into force, there was no ICC as provided for in the Convention on Genocide. ICTY can, at best, to prosecute 10 cases per year (Louise Arbour, Chief Prosecutor of the ICTY), so that a large part of the prosecutions for crimes committed in the framework of the so-called ethnic cleansing remain in the national courts.

ab) Such an interpretation of the Genocide Convention is confirmed in Article 9, paragraph 1, of the Statute of the ICTY, which regardless of the Genocide Convention establishes a competitive jurisdiction of national courts to prosecute acts of genocide. ICTY

prosecution, in addition to Council tribunal, invited to interpret the statute, and also under the concept of national courts in terms of the above provision includes not only the jurisdiction of the courts of the state where the offense was committed, but also the jurisdiction of any other State (Louise Arbour). This stems from the fact that by the tribunal prosecutors welcomed the prosecution by the federal prosecutor and the relevant provincial Supreme Court under Article 120 paragraph 1 no. 8 of the courts, not only in this particular case, but also in cases against D. and K. and who are guided in Germany. Had the international community to the provisions of Article 6 of the Convention on Genocide preclude such an interpretation, it would be logical to in Article 9 of the Statute of the ICTY constitute only the authority of the state where the offense was committed - Bosnia and Herzegovina and other countries of the former Yugoslavia, not to constitute the general jurisdiction of national courts. Indeed, the International Court of Justice in The Hague, in the framework of the complaint filed against the Federal Republic of Yugoslavia, July 11th, 1996 issued interim judgment in which, inter alia, decided to assume the rights and obligations under the Convention on Genocide operate erga omnes and obligations of each State to prevent genocide and punish not territorially limited by the Convention. (International Court of Justice, Reports 1996, p. 595, 616)

ac) From the circumstances that the Genocide Convention does not provide for universal jurisdiction only follows that Member States are not obliged to introduce the principle of criminal prosecution for the crime of genocide that was committed by a foreigner against foreigners abroad . However, the Contracting States under international law is not denied that in order unutrašnjepravnom do more than the one prescribed by international law, in relation to the prosecution of genocide whose international character based on customary international law, which is recognized by an international treaty , that State Party undertakes only under certain conditions on the prosecution of genocide .

b) The provincial Supreme Court in Düsseldorf is properly recognized legitimizing connection point of being accused of the May 1969 until early in 1992 had a residence in Germany and which has subsequently been officially reported in B, in the fact that his wife was German and his daughter, who to this day continue to live in Germany on several occasions to visit after work, and the fact that the in Germany was arrested after he voluntarily entered the territory of Germany. The very relationship with Germany justifies the application of the German criminal law on the offense. In addition, the act of criminal prosecution in accordance with military and humanitarian measures in which Germany participates together with other countries on the UN mission in Bosnia-Herzegovina in order to oppose the Serbian expansionist aspirations, and that the civilian population, referring to the Muslim ethnic group, protection from persecution and murder by Serbia. Moreover, in the specific case of the ICTY and the BiH state which has jurisdiction by the territorial principle they rejected takeover prosecution. Do you then, if the jurisdiction of the German courts is not based on Article 6 no. 1 CC than on Article 6 no. 9 CC (obligations of prosecution on the basis of interstate agreements) may abandon other connection fact, the Council must decide.

2) Also, the crime of murder that was committed in concurrence with the criminal offense of genocide covered by the principle of universal jurisdiction in Article 6 no. 1 CC so that it does not matter whether the addition of Article 6 no. 1 CC - for criminal offenses in concurrence with Co. KG Genocide applying Article 6 no. 9 CC whose preconditions provincial Supreme Court accepted for the period after May 9th, 1992. (ICTY verdict of November 11th, 1998 Čelebići). The Council is of the opinion that Article 6 no. 1 CC based jurisdiction of German criminal law for offenses committed in concurrence with kd genocide under Article 220 and paragraph 1 No. 1 of the CPA, and that meet the

elements of the crimes of murder with premeditation and murder by negligence under Articles 211 and 212 of the Criminal Code .

a)The assumption that Article 6 No. 1 of the Criminal Code includes offenses under Article 212 and 211 which were committed in concurrence with the criminal offense of genocide under Article 220 and paragraph 1 No. 1 of the Criminal Code (optional jurisdiction), based on the fact that this article and article 212 of the Criminal Code as an element of the crime of murder of a man presumed intentionally so that the facts can be explored and determined the verdict for genocide under Article 220 and paragraph 1 No. 1 of the Criminal Code, carries and conviction for murder. If the perpetrator of this act with the intent to destroy in whole or in part, a group which is protected by Article 220 and paragraph 1 of the Criminal Code, the rule makes both murder from base motives. Taking into account the interweaving of these crimes that transcends concurrence works based only on mere identity of enforcement actions, established that the German courts, which are responsible for the adjudication of matters of crimes of genocide under Art. 6 no. 1 CC, assign jurisdiction to apply German criminal law to offenses of murder committed in concurrence with the criminal offense of genocide when conditions of alternative actions under Article 220 and paragraph 1 no. 1 CC. Because of this connection by a 220 paragraph 1 No. 1 of the Criminal Code with the offense of murder with intent of Art. 212 and 211 of the Criminal Code is often used in the literature maintains that in those cases where the investigation leads to the suspicion that it is sufficient for an indictment for a criminal offense under Article 220, paragraph 1, and the number 1, then we can establish and convictions for acts of Article 211 and 212 in Section 6 No. 1 CC and when it is not possible to prove genocidal intent, and only there are objective elements of the crime of genocide. May remain open whether such an attitude may defer or whether it should dismiss the proceedings

for lack of procedural requirements when you can not prove the element of intent in the crime of genocide when there are other provisions for establishing jurisdiction of German law can not be applied, because in this case provincial Supreme Court found the genocidal intent of the accused in cases of murder.

b ) The adoption of further responsibility by the Council it is the direct application of Article 6 No. 1 of the Criminal Code, for the crime of genocide under Article 220 , paragraph 1, No. 1 of the Criminal Code by headings includes murder with intent, and as such necessarily covered the above article . Prohibition analogy that excludes the appropriate application of Article 6 of the Criminal Code and the cases in concurrence, and different from those enumerative listed as elements of competence.

c ) The existence of additional assumptions competence is not inconsistent with the case law nor the Federal Court. ( ... )

3) The validity of the German criminal law, thus the German jurisdiction arises in the present case of Article 7 and paragraph 2 of 2 CC.

a) The accused, who is a homicide, a stranger, is committed to work abroad in the RBH, internationally recognized April 6th, 1992 and against the citizens of the state of Muslim religion. He was arrested on December 16th, 1995 at the airport Dusseldorf ie on the territory of Germany. The work was at the time the crime was committed by the then applicable criminal law BH, and under Article 141 of the Yugoslav Criminal Code which corresponds to Article 220 of the Criminal Code of Germany and Article 36 BH CC that in paragraph 2 of 4 includes relevant provision of the criminal offense of murder from base motives, was incriminated .

b) By means of extradition offenses would be admissible in part because there were no obstacles to extradition under Article 3,

paragraph 2, Article 6, paragraph 1, and Article 7 of IRG 's nor obstacles that essentially correspond to these provisions, which are governed by Article 2 to 4 German-Yugoslav agreement on extradition. According to Article 6 paragraph 1 and 2 IRG is permitted extradition with political offenses where the accused prosecuted or convicted of a criminal genocide, murder with premeditation and murder by negligence. According to Section 3, paragraph 2, indent and the Extradition Treaty is not considered a political offense intentionally committed a crime against life, unless the offense, which is not in this case, committed in open combat. According to Article 3, paragraph 2 item b of the Treaty on extradition, genocide is not considered a political offense, as Yugoslavia and Germany are bound by the Genocide Convention to undertake prosecution.

c) The Council with certainty, without the need to clarify the fact that the accused citizen of BH and FRY, found that the accused will not, or can deliver the country where the offense was committed, or the country of his nationality. By letter of the Ministry of Foreign Affairs of February 2nd, 1997 informed the Federal Minister of Justice had no plans to file a request for the extradition of the accused, so that is not an option extradition to that state, and in the absence of a formal request for extradition under Article 2 paragraph 1 IRG or under Article 1 paragraph 1 of the German-Yugoslav Treaty on Extradition. The defendant would not have delivered the Federal Republic of Yugoslavia as its nationals, and when asked the same request for extradition. The Federal Ministry of Justice, that the authority competent under Article 74 IRG, on request of the Council in a letter from February2nd, 1999 responded that the federal government would not have approved the extradition of Yugoslav authorities and if there were such a requirement.

## II. Objections to violations of the criminal procedure

( ... )

## III. Objections to the findings of fact

Objections to the findings of fact lead to reversal only convictions in the sense that the accused guilty instead of more crimes of genocide for only one crime of genocide (Article 220 of the Criminal Code). The rest of the objection to the findings of fact unfounded .

1. ( ... ) On April 6th, 1992 iH was recognized by the EU. The European Union recognized Bosnia as an independent state on April 6th, 1992, as early Slovenia and Croatia did, and the three former Yugoslav republics on May 22nd, 1992 became UN members .

a) In the meantime, Slobodan Milošević, a president of Serbia in 1989, became a leading figure of newly Great Srebian movement, which aimed to politically unite all Serbs living in the former Yugoslavia. Serbian nationalists began, first in Croatia and later in Bosnia and Herzegovina, with the preparations for the secession of territories inhabited by Serbs. In September 1991, in BH, they established the first four, then five autonomous Serbian areas, including the autonomous region of northern Bosnia, based in Doboj. On January 9th, 1992 "Assembly of the Serbian People in Bosnia and Herzegovina" proclaimed "Serbian Republic of Bosnia and Herzegovina", later the Republic of Serbia, which later adopted its own constitution in which the autonomous region defined as a purely Serbian areas.

b) Upon the established facts of the impugned judgment, began much earlier and targeted by the Bosnian Serbs and the Serbian Army

centrally managed uncompromising policy of ethnic-cultural unification of so-called Serbian autonomous area which is in the front line in relation to the Muslim population who lived in these areas. From April 1992 the Yugoslav People's Army (JNA) and paramilitary forces in coordination with the political leadership of the Bosnian Serbs attacked simultaneously at several locations in northern and eastern borders of Bosnia to Serb-populated regions "ethnically clean". They forcibly destroyed the elementary existential basis of Bosnian Muslims in these areas. ( ... )

The means were destroying homes, cultural and religious buildings, entire villages and parts of towns, random murder, robbery, extortion and terror of paramilitary troops by the competent authorities tolerated. Furthermore, the instrument entered and arrested military elligible men and their detention in prison camps with inadequate supply, forced labor and the worst forms of abuse.

c) The purpose and object of such action cleansing has become in April 1992 to fall in 1992 even the area around the town of Doboj. ( ... ) The Municipality of Doboj, the second largest railway crossing point in Yugoslavia consisted of the city of Doboj and the surrounding villages Bukovačke Čivčije, Mala Bukovica Kostajnica, skylights and Grapska, northwest and northeast of Doboj, as well as villages in the south Ševarlije. On May 3rd, 1992 Serbian forces occupied the center of the city of Doboj, Muslim neighborhoods were shot with heavily arms, young men and members of the intellectual class were arrested. The village Mala Bukovica already in April 1992 surrounded Serbian soldiers and paramilitaries. Muslim population is forbidden to leave this village. In June 1992 began a terror in the village by Muslim men executed and abused, confiscated their money and valuables, and were taken to detention camps. JNA occupied village Bukovačke

Čivčije on May 4th, 1992on several occasions, Muslim men derived from the house, beaten and taken away. In mid-June in 1992 they lifted into the air mosque, and by then the remaining Muslim men were taken. Muslim village Grapska was shelled from noon May 10th, 1992 by tanks, antiaircraft missiles and mortars, because the population did not obey the orders to surrender their weapons. On that occasion, they destroyed or burned most of the houses. In the evening the soldiers and paramilitaries carried out from houses all the people who were present at the site. They had to gather at the exit of the town, hand in their weapons in a single column on foot to go to the neighborin , predominantly Serb populated Kostajnica where women, children, the elderly and isolated were by buses driven away from their homes. Able-bodied men were deported to concentration camps where they were exposed to life-threatening torment and torture. The village Ševarlije remained until June 1992 spared so that the majority of the Muslim population could escape. On June 17th or 18th, 1992 paramilitary units carried out the remaining, mostly elderly residents of the home, men and women are separated, while the men had to gather outside the village, where they humiliated, insulted, abused, and several of them were killed. The remaining men were taken to detention camps. In Doboj region have been established for at least four prison camp where Muslim prisoners were subjected to severe physical abuse by Serbian soldiers and members of paramilitary groups, and where they had forced to work. According to the established facts accused Serb originally from the village of Kostajnica, where he was considered wealthy, participated in these acts of expulsion. He appropriated the ideology of a Serbian superpower, and he had assembled a group of volunteers who were uniformed and armed like the military and the police. These paramilitary groups participated in coordination with the Serbian army and the political leadership, as well as with local law enforcement agencies in the task of patrolling the streets and looting Muslim homes, it is forced by the prisoners .

d) The provincial Supreme Court found the following criminal acts of the accused: Defendant personally participated in closer laid arrest and detention of Muslim men from the village Grapska, Mala Bukovica and Ševarlije on May 3rd, 4th, and 5th and the first half of June in 1992, as well as in the later manifold and infliction of bodily injury to individual prisoners (of A II 8a – g. and i. explanations) even single-handedly or in complicity with others, killed the villagers. Thus, according to the established facts, in mid-June 1992 together with another person, glaring at Grapska 22 remaining inhabitants - women, disabled and elderly men who were afraid of combat operations, gathered outside the village (act II A 8 h .). Three Muslim detainees, who were there performing forced labor, had subsequently transported the corpses in a mass grave. A few days later, on June 7th or 8th, 1992 accused with members of his paramilitary group drove 40 - 50 men from their village Ševarlije, allowed them to be abused, and six of them were killed on his orders. The seventh victim, who was only wounded died when the barn along with the other six corpses burned (act II A 8 j .) . One day closer to indefinite in September 1992 the accused was a prisoner who had previously been abused by Serbian soldiers blows butt and poles in the courtyard central prison in Doboj put a tin bucket on his head, so that the soldiers showed a new way to torture and murder. After that is a force pounded wooden stakes per bucket, so that the victim immediately fell and lay motionless, and died from the effects of impact (the work of A II 8 k .) .

2) Such legal actions correctly identified the accused who were involved in the events initiated by the Serbian side in the Doboj region and quasi-sovereign control systematic destruction and persecution of Muslim population in the area, the provincial Supreme Court properly characterized as actions that meet the objective and subjective elements of the crime of genocide in accordance with Article 220 and paragraph 1 of the Criminal

Code. If it was being genocide provincial Supreme Court found the grounds that the accused with a view to a specific group of Muslims on the basis of religion and customs, in northern Bosnia, in any case, in the Doboj region, as such, completely or partially destroyed by in cases A II 8h ., 1 and k . killing members of the group (Article 220 and paragraph 1 of 1 CC) and in other cases, A II 8 a.-g. and i. the group has imposed conditions of life that are eligible to bring about its physical destruction in whole or in part (Article 220, paragraph 1 and No. 3 CC). At the same time, the provincial Supreme Court properly determined that the Article 220 and paragraph 1 of the Criminal Code enough that the intention of the accused was directed to the regional limited part of the Muslim population, which, among other things, should be banished from the so-called Serbian autonomous areas according to the ideas of radical supporters of the Greater ideas in BH, which were controlled by the state. According to the provisions of Article 220 of the Criminal Code, in addition to the intent to one of these groups there as such completely destroyed, it is sufficient and focused intent to destroy a group in part. Also, the evaluation of the provincial Supreme Court that the accused committed, in addition to the crime of genocide, multiple murder in concurrence under Article 211 of the Criminal Code, so he killed with premeditation 22 people in the village Grapska (A II 8 h .), the seven men in the village Ševarlije (A II 8 j .), and Muslim prisoners in September 1992. Central Prison in Doboj (A II 8 k .), cannot be legally objectionable.

3) However, the provincial Supreme Court is not sufficiently paying attention to the elements of the crime under Article 220 of the Criminal Code and its protective function, and therefore the criminal acts of the accused, starting with the fact that the violations committed to the detriment of the different members of the Muslim population, directed against their personal safety of goods, such as life, the right to physical integrity and freedom,

committed at different times and in different places, is incorrectly characterized as a number of crimes of genocide. Criminal acts of the accused must be seen as an act that stems from the background of the protective purposes , and these elements of the crime of genocide under Article 220 of the Criminal Code .

a) ( ... )

b) In accordance with its international legal roots, unlike the crime of murder and causing bodily harm, Article 220 of the Criminal Code does not constitute a criminal norm intended to protect individual property, but is committed to the protection of more social existence persecuted national, racial and/or religious groups. Realization of the crime under Article 220 of the Criminal Code, they do not necessarily require that the perpetrator weighs the physical destruction and psychological destruction of certain groups. Just that it works to the group destroyed the social existence as such, its social unity in their uniqueness and unity and a sense of common belonging. From this premise is correctly set the provincial Supreme Court. The intent of destruction especially well manifested in the murder with intent and causing grievous bodily harm (Article 220, paragraph 1, and No. 1 and 2 CC), however, such as the provisions of Article 220 and paragraph 1 of the Criminal Code are sufficient and other measures suitable for achieving the goal of the social identity and the existence of the group destroyed, so it would be a group of children forcibly transferred to another group (Article 220, paragraph 1 and No. 5 CC) or when to establish restrictions that prevent births within the group (Article 220, paragraph 1, number 4 of the Criminal Code ). It also refers to the existence of genocidal intent of the perpetrators and the threat to the physical existence of the group, which is accomplished by the group exposed to such living conditions that would tend to lead to total or partial physical

destruction of the group (Article 220, paragraph 1 and No. 3 CC). For bringing in such living conditions are suitable, in addition to causing physical or psychological harm or murder with the intent of the group members, creating inhuman living conditions, such as in prison camps, deprived of adequate food, or the necessary medical supplies, as well as the systematic persecution of the group from its homeland. ( ... )

c) The provincial Supreme Court acts of the accused legally qualified as eleven solo works with each of the works, in addition to the protective good - the identity of a group of Muslims, hurt and personal protective good - life, liberty and/ or physical integrity, with each offense filled the elements of the crime of genocide. These individual actions, according to the provincial Supreme Court, are not covered by a single premeditated destruction of a group of Muslims in the Doboj region that would encompass the natural unity of action. Such legal characterization is accurate in the sense that they are not filled with the objective and subjective conditions of the natural unity of action. Also, only under special conditions, committing actions directed against the personal property of various persons considered partly in terms of the existence of the natural unity of action. However, the assumption that there are eleven offenses does not take into account the specificities of the objective elements of the offenses referred to in Article 220 and paragraph 1, in particular paragraph 1 No. 3 of the Criminal Code, or the meaning of the subjective characteristics of genocidal intent.

aa) ( ... ) You should not (referring to the provincial Supreme Court) consider that being a criminal offense under Article 220 of the Criminal Code, as discussed above, it is not intended to protect individual property, but overindividual j protection of social existence one of particular groups closer in Article 220 and CC. (...)

bb ) The provincial Supreme Court and consider individual protective good, not enough attention given to the legal nature of Article 220 of the Criminal Code and therefore the cases of A II 8 a - k. observing each for himself as an independent work. ( ... )

For cases qualified as a separate offense took decisive (VPS) that these actions of individuals or groups of people in different situations detained and tortured some prisoners. These actions of the accused, even though according to the established opinion meet the elements of a criminal offense under Article 223 of the Criminal Code and Article 224 CC and 239 CC members, are not sufficient to meet the assumptions of the crime of serious physical injuries under Sections 224 and 225 of the Criminal Code, thereby no prerequisites for one of the alternative actions under Article 220, paragraph 1 and No. 2 of the Criminal Code.

Only physical abuse or imprisonment of individuals can not be subsumed under one of the alternative acts committed in violation of Article 220 and paragraph 1 of 3 of the Criminal Code, as Article 220 and paragraph 1 of the Criminal Code covers as well as Article 11 of the Convention on Genocide only the hardest attack acts against the existence of the group as an objective element execution. For such a necessary weight is not enough to apply the ordinary or serious bodily injury, or the mere fact of unlawful deprivation of liberty at the expense of individual group members. Accordingly, Article 220, paragraph 1 and 3, as opposed to in paragraph 1 No. 1 and 2 shall not apply to the killing or inflicting severe psychological and physical torment "group members", but refers specifically to a case of putting the "group" in the conditions of life that are eligible to bring in whole or in part to its destruction. The condition of putting the group under such conditions of life that are eligible to bring about complete or partial destruction of the same, filled with actions made by the accused or his or her participation, destruction of homes and

villages in the region of Doboj, persecution and arrests of Muslim residents, and the occasion of they committed and infliction of bodily injury. The totality of these measures is appropriate to destroy the physical existence of the group in whole or in part, because it takes away the basic requirements for life through the imposition of inhumane living conditions - as in prison camps - and because they were taken from the basics of life by destroying houses, confiscation of property and the systematic persecution. Therefore, the established works under A II 8 a - g and i only meet the objective elements of the crime of Article 220 and paragraph 1 of 3 of the Criminal Code in its entirety, and for this reason are legally considered an offense .

d) Legal cannot be disputed qualifications provincial Supreme Court to the murder committed by the accused alone or in cooperation with others, subject to the offenses referred to in Article 220 and paragraph 1 No. 1. Unlike the provincial Supreme Court, the Council considers that the alleged murder, no matter what exercise of the criminal offense of tries the 211 CC, at least from the perspective of the Crime of Genocide, along with other criminal offenses referred to in Article 220, paragraph 1 and 3, are in meaning of Article 220 and paragraph 1 of the Criminal Code , an act .

aa ) ( ... )

bb ) ( ...) The provincial Supreme Court case of A II 8 c . legally qualified as genocide in concurrence with the criminal offense of unlawful deprivation of liberty - committed over 300 people, so it is for these crimes uttered a single sentence of life imprisonment and cited the attack on the village of Grapska in just one day a whole village as one complete communities destroyed, killing several people, the houses are for the most part destroyed and the remaining able-bodied men were arrested and detained under

inhumane conditions, and women, children and the elderly, apart from a few exceptions, expelled. By understanding VPS 's, in this case the concentration used for the whole scheme of expulsion and destruction by Serbs to a Muslim village at one stroke destroyed. After such a criminal assessment unlawfulness and guilt of the defendant, in connection with the proceedings at the expense Grapska village and its inhabitants, no more space for the evaluation of adjudicated offenses under A II 8 d, e, i, and h., Committed in concurrence with Article 211, and 223 of the Criminal Code as a separate crime of genocide, as these later works are also directed against the inhabitants of the villages whose social unity were destroyed, and that works in the case of A II 8 c. was qualified as genocide and has represented the basis for the imposition of life imprisonment. These examples show that in those cases in which the perpetrator executes one or more alternative objective acts committed in violation of Article 220 and paragraph 1 of the CC in order to concretely particular, national, racial, religious, group, or part of it completely, or partially destroyed, imposes evaluating such actions are related. ( ... ) Being Co. KG under Article 220, paragraph 1, as literally, and in essence means, unless special action, and a whole series of actions that make one work.

cc ) ( ... )

Even though the accused motive for his action was far-reaching intent to destroy a group of Bosnian Muslims , it is sufficient for the realization of being kd of Article 220 and paragraph 1 of the Criminal Code, as stated in Article 220 , paragraph 1, number 1 (in full or in part, to destroy) that his intention with the established objective of actions related to the destruction of only a part of the group where the volume features kd time and space made to a particular part of a regional group of Bosnian Muslims. ( ... )

## Instead of a Conclusion

The case of Nicholas Jorgić Jorga, a man who is the first ever convicted of genocide clearly shows a few things:

- The crime of genocide is a serious crime that is in line with the Convention on the Prevention and Punishment on genocide of 1948, can be processed around the world, regardless of where it is committed,

-There is a need for systematization and monitoring of procedures for the war crimes committed in Bosnia and Herzegovina, that are conducted out of the territory of Bosnia and Herzegovina,

-In Bosnia and Herzegovina during the war, genocide was committed even outside of the Safe area of Srebrenica.

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